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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 346

ROBERT W. HALLIDAY,
Petitioner,

vs.

S. R. SQUIRE,
Superintendent of Banks of the State of Ohio,
In Charge of the Liquidation of
THE UNION TRUST COMPANY,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

THOMAS J. HERBERT, *Attorney General of Ohio;*
E. S. LEIBERMANN, *Special Counsel,*
FRANK WILES, *Of Counsel,*
Union Commerce Bldg, Cleveland, Ohio,
Attorneys for Respondent.

JAMES BRAVO,
WM. T. ARNOS,
R. W. HALLIDAY,
Leader Building, Cleveland, Ohio,
Attorneys for Petitioner.

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INDEX.

The Petition Does Not Include Matters Required by Rule 38-2 1

The Facts 2

The Question Presented 5

Argument 6

Conclusion 7

AUTHORITIES CITED OR DISTINGUISHED.

Cases.

Bonner vs. Gorman, Admr., 213 U. S. 86 6

Central Land Company vs. Laibley, 159 U. S. 103 6

Coates vs. Chillicothe State Bank, 23 O. S. 415 7

Converse, Petitioner, In Re, 137 U. S. 624 6

Hawkins vs. Bleakly, Auditor of the State of Iowa, et al., 243 U. S. 210 6

Howard vs. Kentucky, 200 U. S. 164 6

Iowa Central Railway Company vs. Iowa, 160 U. S. 389 6

National Licorice Co. vs. Nat. Lab. Rel. Bd., 60 S. C. R. 569 2

Rhodes vs. McDowell, 24 O. App. 94 7

Wittee vs. Lockwood, 39 O. S. 141 7

Constitutions.

Constitution of Ohio, Article I, Section 5 1

Constitution of the United States, Amendment 14, Section 1 ..... 1, 5, 7

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vs.

S. H. SQUIRE,
Superintendent of Banks of the State of Ohio,
In Charge of the Liquidation of
THE UNION TRUST COMPANY,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI.

THE PETITION DOES NOT INCLUDE MATTERS REQUIRED BY RULE 38-2.

On page 6 of his petition, the petitioner asserts that certain decisions of courts and judges, to which he had already alluded, denied to him the right held by him under the Constitution of Ohio, Article I, Section 5 and under the Constitution of the United States, Amendment 14, Section 1. He does not state whether he was so deprived of a right by reason of a state law abridging his privileges or immunities, or the manner in which such privileges or immunities were abridged; nor whether he was so denied such right by reason of being deprived of liberty of property without due process of law, nor wherein he was not accorded such due process; nor whether he was denied such right by reason of not being accorded equal protection of the law, nor wherein he was not accorded such equal protection.

He has not included in his petition a statement of the questions presented, nor a statement particularly disclosing the basis upon which this Court has jurisdiction to review the judgment in question, whether by reason of a decision of a federal question of substance not heretofore determined by this Court, or a decision upon such question in a way not in accord with applicable decisions of this Court.

By reason of such omissions, the petition for certiorari should be denied, we respectfully submit, upon the authority of *National Licorice Co. vs. Nat. Lab. Rel. Bd.*, 60 S. C. R. 569.

THE FACTS.

On page 2 of his petition, the petitioner correctly states that the judgment complained of was rendered upon our motion for judgment on the pleadings; and that the pleadings consisted of his petition as plaintiff, our amended answer and his reply. Because the petitioner has not stated the questions presented and has not stated the contents of the pleadings with sufficient fullness to disclose that no state statute was involved therein which was claimed to be violative of the constitutional provisions mentioned, and because the pleadings are so lengthy, occupying thirty-three pages of the record, we are submitting this brief summary of the facts which they disclose.

According to the petition the plaintiff's mother owned certain real estate at the time of her death. He was her sole heir at law. His father and The Union Trust Company, a state bank of which this defendant is liquidator, conspired together to cheat him, and as a result of such conspiracy deprived him of possession and of the rents of such real estate. The unlawful means employed by the conspirators to accomplish their end are not set forth in the petition. According to the petition, too, judgments were rendered not confirming the plaintiff's claimed ownership of

such real estate but denying such ownership. Such judgments were rendered in certain corporation dissolution proceedings mentioned in the petition. The dissolution proceedings were instituted by the conspirators through the instrumentality of plaintiff's father. The corporations whose dissolution was sought in such proceedings are referred to by the plaintiff in his petition as "alleged" corporations and "fictitious" corporations.

Our amended answer contained four defenses. The first was general denial, and by necessary implication it was waived by and for the purpose of our motion for judgment on the pleadings. The fourth was the general statute of limitations, which, too, was not argued by us or considered by the court in passing upon the motion for judgment on the pleadings for the reason that an issue was made thereon by the plaintiff who denied having the knowledge with which we charged him in our allegations constituting such fourth defense. Only our second and third defenses were argued by us in support of our motion for judgment on the pleadings and considered by the court.

Such second defense was to the effect that the defendant Superintendent of Banks had not, prior to the institution of the suit by plaintiff, rejected the claim which had been presented to him by the plaintiff; that by reason thereof, plaintiff's suit had been prematurely instituted. In his reply plaintiff did not deny that he had not awaited the rejection of his claim; he merely asserted in avoidance that he had notified the Liquidator that unless the claim was allowed or rejected within a stated period he would regard the claim as having been rejected; that the claim was not allowed or rejected within such period and that he thereupon instituted his suit. It is thus to be observed that there was no issue as to such second defense by reason of a denial by the plaintiff; and by necessary implication by and for the purposes of our motion for judgment on the pleadings we admitted the truth of the matters in avoidance so alleged in the reply.

In our third defense we pleaded in detail the pleadings filed, proceedings had and judgments rendered in the cases to which plaintiff had alluded in his petition. And we pleaded in detail the pleadings filed, proceedings had and judgments rendered in another action which plaintiff himself had instituted for the purpose of establishing claimed ownership of such real estate, in which suit, too, plaintiff's claimed ownership of such real estate had been denied. In his reply to such third defense, plaintiff did not deny any allegation contained therein. In fact, as is shown on page 33 of the record in the next to the last paragraph of his reply, plaintiff adopted the allegations of such third defense, as he said "to supplement the allegations of his petition." Plaintiff also included in his reply to such third defense allegations to the effect that the judgments against him in the dissolution proceedings, whereby his claimed ownership of such real estate had been denied, had been induced by the production in the evidence of certain false certificates of corporate resolutions, which false certificates he himself had made; but that he had made the false certificates by reason of duress which had been practiced upon him by an officer of The Union Trust Company in pursuance of the conspiracy to cheat him; that such duress consisted of threats by such officer to foreclose mortgages upon such real estate.

It is thus apparent that just as there was no issue upon our second defense occasioned by any denial of plaintiff, so there was no issue upon our third defense occasioned by any denial of the plaintiff; and by necessary implication, by and for the purposes of our motion for judgment on the pleadings, we admitted the truth of the new matter pleaded by the plaintiff in reply to our third defense, just as we made such admission of plaintiff's new matter pleaded in reply to our second defense.

Thus the pleadings show that there was no disagreement of fact insofar as the plaintiff's claim and our second

defense and his reply thereto was concerned; and no disagreement of fact insofar as plaintiff's claim and our third defense and his reply thereto was concerned. And they show that neither the plaintiff's claim against the Liquidator of The Union Trust Company nor any defense of the Liquidator thereto was based upon any federal statute or any state law at any time claimed to be in violation of any federal constitutional provision.

There is just one more fact to which we wish to allude in this recital. It is that just as the record shows at page 35 that on November 18, 1939 our motion for judgment on the pleadings was granted, as the petitioner herein alleges that it was, so on the same page of the record it appears that on September 27, 1939 the plaintiff filed a brief opposing such motion for judgment on the pleadings. We mention this as illustrative of the fact that the judgment which the petitioner claims violates his constitutional rights was rendered only after he had been given an opportunity and had availed himself of an opportunity to oppose such judgment.

THE QUESTION PRESENTED.

From such facts, and from the statements and arguments of the petitioner on pages 2, 3 and 4 of the petition to the effect, or designed to be to the effect, that the allegations of our second defense and his reply thereto made an issue determinable by a jury, and that our third defense does not constitute a defense, and from his recital of his repeated demands for and insistence upon a jury trial, we assume that the following is the question which he intends to present:

> Does Amendment 14, Section 1 of the Constitution of the United States authorize or require this Court to review a judgment of a state court rendered on the pleadings, when the losing party claims that such judgment was erroneous and that by reason thereof he was denied a jury trial which he had persistently demanded?

ARGUMENT.

This Court has held that when parties have been fully heard in the regular course of judicial proceedings, an erroneous decision does not deprive the unsuccessful party of his property without due process of law within the meaning of the Fourteenth Amendment. *Bonner vs. Gorman, Admr.*, 213 U. S. 86. To the same general effect see *In Re: Converse, Petitioner*, 137 U. S. 624, *Central Land Company vs. Laibley*, 159 U. S. 103 and *Howard vs. Kentucky*, 200 U. S. 164.

And this Court has held that trial by jury is not one of the rights secured by the Fourteenth Amendment. *Hawkins vs. Bleakly, Auditor of the State of Iowa, et al.*, 243 U. S. 210.

And this Court has decided the identical question here presented in *Iowa Central Railway Company vs. Iowa*, 160 U. S. 389, from which we quote paragraphs 3 and 4 of the syllabus as follows:

> "This court has no power to review a decision of a state court that the averments of an answer in a pending case set forth no defense to the plaintiff's claim.
>
> "It is no denial of a right protected by the Constitution of the United States to refuse a jury trial in a civil cause pending in a state court, even though it be clearly erroneous to construe the laws of the State as justifying the refusal."

If an erroneous judgment on the pleadings were reviewable because the losing party was thereby deprived of a trial by jury, an erroneous judgment on a demurrer should likewise be reviewable. And an erroneous judgment on a directed verdict should likewise be reviewable. And an erroneous judgment *non obstante* should likewise be reviewable. And since the gravamen in each such example is the denial of justice by reason of error, then every erroneous judgment should be reviewable by this Court. And since invariably the losing party thinks that the judg-

ment against him is erroneous, every judgment should be reviewable by this Court. And the absurdity of the last such conclusion but emphasizes the error of the first.

The Fourteenth Amendment guarantees that every litigant shall have his day in court. It does not guarantee that justice shall be infallibly administered.

Rhodes vs. McDowell, 24 O. App. 94, *Coates vs. Chillicothe State Bank*, 23 O. S. 415, and *Wittee vs. Lockwood*, 39 O. S. 141, cited by the petitioner in his brief, have no application to the case at bar. But if they unquestionably demonstrated that the judgment which the petitioner seeks to have reviewed was erroneous, the prayer of the petition should nevertheless, upon the authority of the decisions of this Court which we have cited, be denied.

CONCLUSION.

We submit that the petition should be denied for failure to comply with the requirements of Rule 38-2; and that the petition should be denied because there is not presented a federal question of substance not heretofore determined by this Court, nor a federal question of substance decided in a way not in accord with applicable decisions of this Court.

Respectfully submitted,

THOMAS J. HERBERT,
Attorney General of Ohio,

E. S. LINDEMANN,
Special Counsel,
Attorneys for Respondent.

FRANK WILKE,
Of Counsel.